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10/800,210	03/15/2004	Richard T. Fraser	04B-2094	8551
22447	7590	06/30/2004	EXAMINER	
DAVIS CHIN 10281 WEST LINCOLN HIGHWAY FRANKFORT, IL 60423			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/800,210

Applicant(s)

FRASER, RICHARD T.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 17 and 20 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1-4; Species II - Figs. 5-8; and Species III - Figs. 9-12.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with David Chin on Wednesday, June 23, 2004 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-9 and 17-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

3. The drawings are objected to because the central openings represented by no. 40 in Fig. 4 do not clearly show if these are merely drain hole type openings or whether the central openings (40) are in fact defined by the bottom wall (34) of each end cap member. Also it is unclear if the bottom wall (34) is actually the bottom edge of the side wall (36) and hence the end cap member (28). Basically the bottom wall (34) and central openings (40) therein are not clearly illustrated. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered

and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: no. 46 one end of the tubular members is not shown in Fig. 4 (there is a no. 64 in Fig. 4 below rightmost occurrence of no. 30 in Fig. 4 that appears that it was supposed to be no. 46). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to because the flange (58) is not clearly shown in Fig. 3. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

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include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

6. Claims 8, 9, 17-20 are objected to because of the following informalities:

Claim 8, line 3, "an" should be replaced with "and".

Claim 17, line 7, "reel" should be inserted before "holder means".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3, 17, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sharpe et al. 6,209,721.

In regard to claim 1, Sharpe et al. discloses a bucket (2, 9); a fishing rod and reel insert assembly including a flat disc portion (one of 17 on upper left of 7 in Fig. 2), a plurality of end cap members (7) fixedly secured to the disc portion (see Fig. 2; all of the end cap members are secured to a single one of the flat disc portions 17 by interconnection of all the parts), and a plurality of hollow tubular members (5); first ends of the tubular members secured to the end caps (see Fig. 2), the second ends of the tubular members being formed with opposed first and second slots (slots between deformable members 17 which are located on opposite left and right sides of 18; slots not being particularly claimed); and a cover with a plurality of openings (14) which are aligned with the first ends of the tubular members so that the cover is slidable down over the tubular members (4 is slid over top of both 5 & 7 when assembled together) and is engageable with the open end of the bucket means (see Fig. 2); wherein fishing rods are capable of being inserted into the tubular members and supported in a vertical position adjacent to each other (fishing rods are capable of being supported therein as shown in Fig. 2).

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In regard to claim 17, Sharpe et al. discloses bucket means (2, 9) with a closed bottom base (20) and a cylindrical sidewall (9); rod and reel holder means including a plurality of end caps (7) and a plurality of hollow tubular members (5), the first end of each tubular member fixedly secured to one of the end cap members (see Fig. 2), the second end of each of the tubular members being formed with opposed first and second slots (slots between deformable members 17 which are located on opposite left and right sides of 18; slots not being particularly claimed); cover means (4) with a plurality of openings (14) which are aligned with the first ends of the tubular members so that the cover is slidable down over the tubular members (4 is slid over top of both 5 & 7 when assembled together) and is engageable with the open end of the bucket means (see Fig. 2).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 4-7, 19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharpe et al. 6,209,721.

In regard to claim 2, Sharpe et al. does not disclose the bucket holding a five-gallon capacity. It would have been an obvious matter of design choice to make the bucket such that it has a five gallon capacity, since applicant has not disclosed that by



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doing so produces any unexpected results or is critical to the design, and because it appears that the device of Sharpe et al. would perform equally as well by doing so and also because a person of ordinary skill in the art would readily design the capacity of the bucket according to the volume occupied by the clubs or rods yet still allow the bucket to have a size that is manageable by the user.

In regard to claims 4-6, 19, and 20, Sharpe et al. discloses the tubular members made of rigid plastics but does not disclose the plurality of end cap members or the plurality of tubular members made of polyvinyl chloride material or the cover made of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the end cap members and tubular members out of polyvinyl chloride material and the cover out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because polyvinyl chloride material is readily available, inexpensive and can be formed into the desired sizes and lengths very easily and because plastic can be economically molded into many different colors, shapes, and sizes. *In re Leshin*, 125 USPQ 416.

In regard to claim 7, Sharpe et al. does not disclose the tubular members having a length of about 20 inches and a diameter of about one and one-half inches. It would have been an obvious matter of design choice to make the tubular members such that they have a length of about 20 inches and a diameter of about one and one-half inches, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and because it appears that the device of Sharpe et al. would

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perform equally as well by doing so and also because the length and diameter of the tubular members would be designed such that they are capable of accommodating the desired golf club or rod sizes that a user desires.

### ***Allowable Subject Matter***

11. Claims 8, 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bogar, Jr. 4,871,099 discloses a plurality of tubular members (14) with opposed first (24 with sides 20, 22 that act to guide the base of the reel into the slot to rotatably position the rod in the holder 14) and second (32 adapted to accept and coact with finger grip on certain rods) slots.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA